IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2007

CORAM:

THE HON'BLE MR. JUSTICE M.JAICHANDREN

W.P.No.16025 of 2006 [T]
in
OA.No.1950/96.

K.Suresh Kumar ... Petitioner

Vs.

1. The Government of Tamil Nadu,
   rep. by its Secretary,
   Education, Science and Technology Department,
   Fort st. George,
   Madras 600 009.

2. The Director of School Education,
   College Road, Madras 600 006.

3. The Chief Educational Officer,
   Nagercoil, Kanyakumari District.

4. The District Educational Officer,
   Kuzhithurai & Post,
   Kanyakumari District.

5. The Headmaster,
   Government Boys Higher Sec. School,
   Marthandam,
   Kanyakumari District. .. Respondents

This writ petition came to be numbered by way of transfer of O.A.No.1950 of 1995 from the file of Tamil Nadu Administrative Tribunal with a prayer to issue a Writ of Ceriorarified Mandamus to call for the records relating to the G.O.Ms.No.834, Education, dated 23.9.1994 and set aside the same, direct the respondents to regularize the service of the applicant from 1.4.1990 with all attendant benefits.

For Petitioner - Mr.L.Chandrakumar
For Respondents - M.K.T.Gopu,G.A.

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O R D E R

It is submitted by the petitioner that he had passed B.Com., degree in October 1982 in Madurai Kamaraj University and B.Ed., degree in June 1987 from Annamalai University. The petitioner was appointed as Single Part Time Vocational Instructor on 16.11.1982 and he was paid the salary as per the order of the third respondent, dated 21.4.1983. The petitioner was made as double Part Time Instructor from 21.3.1983 and he has been functioning as such in the fifth respondent School. The petitioner and other Vocational Instructors (full time) were brought into regular service by G.O.Ms.No.712, dated 28.5.1990 with effect from 1.4.1990, and by the order of the third respondent, dated 21.3.1991, the petitioner was given the said benefit from 1.4.1990.

2. It is further submitted that as per the above order the petitioner was paid Rs.1400-40-1600-50-2300-60-2600 scale of pay, along with all other allowances. The said scale of pay was given to the petitioner till 31.12.1993. However, by the impugned order G.O.Ms.No.273 Education, dated 7.4.1994, the first respondent illegally ordered that 1387 double part time Vocational Instructor posts, which are brought under regular time scale of pay, be converted under lump sum remuneration of Rs.900/- per month and continued up to 30.9.1994, and consequently from 1.6.1994 to 29.6.1994 the applicant was paid Rs.900/- per month as consolidated pay. It is further submitted that the petitioner's service has been regularized in accordance with G.O.Ms.No.712 Education Department, dated 28.5.1990, along with other similarly placed persons. Thereafter, the petitioner has ceased to be a part time Instructor and he had become a permanent teacher in the Department with proper scale of pay.

3. While so the first respondent had issued G.O.Ms.No.834, Education Department, dated 23.9.1994, without awaiting the decision from the Tribunal and the High Court of Madras challenging the earlier order. It also denies the pensionary benefits to the petitioner. The said Government order has been passed in violation of the principles of natural justice, without giving any opportunity to the petitioner. Further, by the said Government order regularization of the petitioner's service from 1.4.1990 has been unilaterally taken away. Hence, the petitioner has preferred the present writ petition challenging the said Government order which is in violation of the fundamental rights, under Article 14,16 and 21 of the Constitution of India.

4. Heard the learned counsel for the petitioner as well as the respondents.

5. At the stage of the hearing of the petition, it was brought to the notice of this Court that an order, dated 24.6.2004 has been passed by a

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Division Bench of this Court in W.P.No.11389 of 2003 (batch). In paragraph 22 of the said order it is stated as follows:

> "22. Having regard to the facts and circumstances of the case, we feel interest of justice would be served by issuing the following directions:-
>
> (1) The impugned G.O.Ms.No.834 education Science and Technology (Hs.II) Department dated 23.9.1994 is quashed to the extent and so far as it takes away the vested right of regularization already conferred on the Double part-time Instructors as per G.O.Ms.Nos.712 of 1990 and 967 of 1992."

It is also submitted by the learned counsel appearing for the petitioner that the relief sought for by the petitioner in the present writ petition is covered by the said Division Bench order, dated 24.6.2004.

6. The learned counsel, appearing on behalf of the respondents, does not deny the contentions made on behalf of the petitioner.

7. In view of the order, dated 24.6.2004, made in W.P.No.11389 of 2003 (batch), this writ petition is disposed of directing the first respondent to consider the claim of the petitioner and pass appropriate orders thereon within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Government of Tamil Nadu,
   rep. by its Secretary,
   Education, Science and Technology Department,
   Fort st. George,
   Madras 600 009.

2. The Director of School Education,
   College Road, Madras 600 006.

3. The Chief Educational Officer,
   Nagercoil, Kanyakumari District.

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4. The District Educational Officer,
   Kuzhithurai & Post,
   Kanyakumari District.

5. The Headmaster,
   Government Boys Higher Sec. School,
   Marthandam,
   Kanyakumari District.

+ 1 CC To Mr. L.Chandrakumar, Advocate SR NO.52087

W.P.No.16025 of 2006

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